ESCROWS — DEEDS — DELIVERY TO AGENT OF GRANTEE. — A deed was delivered by the grantor to the purchasing agent of the grantee, to be held until the purchase price was paid. *Held*, that this is an effective delivery in escrow. *Alabama Coal & Coke Co.* v. *Gulf Coal & Coke Co.*, 51 So. 570 (Ala.).

It is commonly said that a deed in escrow must be delivered to a stranger to it. See SHEP. TOUCH. 58. But see *London, etc. Prop. Co.* v. *Baron Suffield*, [1897] 2 Ch. 608, 621. A delivery to the grantor's agent as such agent cannot be a delivery in escrow, for the grantor still has complete control. *Day* v. *Lacasse*, 85 Me. 242. Nor can a delivery to the grantee's agent as such be other than absolute, for this is in law a delivery to the grantee. *Bond* v. *Wilson*, 129 N. C. 325. The agent of one of the parties, however, may be made agent of both, or depositary of the deed, and a delivery to him as depositary is a delivery in escrow. *Ashford* v. *Prewitt*, 102 Ala. 264. Since at the time of delivery the bargain is complete, nothing is left to the discretion of the depositary, and his position as stakeholder is not irreconcilable with that of agent of one of the parties. See *Nolte* v. *Hulbert*, 37 Oh. St. 445, 447. Hence "stranger" in the rule above stated means one who is not personally or legally identified in the matter of delivery with a party to the deed. *Cincinnati, Wilmington, & Zanesville R. Co.* v. *Iliff*, 13 Oh. St. 235. And as it is clear in the principal case that the deed was delivered to the grantee's agent as depositary, the holding seems correct.

EVIDENCE — ADMISSIONS — HUSBAND'S ADMISSIONS AGAINST WIFE. — In an action by a wife, joined by her husband, on a benefit certificate in her favor, the court charged that the testimony of the husband at a previous trial was receivable only for the purpose of impeaching his credibility as a witness, and not as an admission. *Held*, that the charge is erroneous. *Knights of Modern Maccabees* v. *Gillis*, 125 S. W. 338 (Tex., Ct. Civ. App.).

The admissions of any party to the record were formerly held receivable in evidence. *Bauerman* v. *Radenius*, 7 T. R. 663. But the declarations of a nominal party, as a next friend, are now often excluded as admissions, though they may be used to impeach his credibility as a witness. *Buck* v. *Maddock*, 167 Ill. 219. It has even been held that the declarations of a representative, as a trustee or an executor, are not competent to prejudice the persons beneficially interested. *Graham* v. *Lockhart*, 8 Ala. 9. The weight of authority, however, seems to favor the reception of the declarations of a representative, if made by the declarant in his representative capacity. *Horkan* v. *Benning*, 111 Ga. 126; *Niskern* v. *Haydock*, 23 N. Y. App. Div. 175. The declarations of a husband as to his wife's separate estate, not made by him as her agent, are not evidence against her, though he be a party to the record. *Aldrich* v. *Earle*, 13 Gray (Mass.) 578. But because of the rights under the laws of Texas of a husband in property acquired by his wife, it seems that in the principal case the husband had a substantial interest in the action. SAYLES' TEX. CIV. STAT., Art. 2967, 2968. Hence his declarations should have been received as admissions. *Cf. Shaddock* v. *Town of Clifton*, 22 Wis. 114.

INSURANCE — DEFENSES OF INSURER — PROPERTY USED IN ILLEGAL BUSINESS. — The defendant insured against fire the plaintiff's building and the furniture in it. The policy expressly described the building as "occupied as a sporting house" — meaning a house of ill-fame. After the policy was issued but before the property was destroyed by fire, the immoral use ceased. *Held*, that the insured can recover. *Morin* v. *Anglo-Canadian Fire Insurance Co.*, 12 Western L. Rep. 387 (Alberta, Trial, Dec. 2, 1909). See NOTES, p. 635.

INTERSTATE COMMERCE — CONTROL BY STATES — ATTACHMENT OF ROLLING STOCK ENGAGED IN INTERSTATE COMMERCE. — Under an Iowa statute, writs of attachment were levied upon certain cars in the possession of local companies

under an agreement providing that such companies should forward, reload, and return them to the defendant railroad, an Indiana corporation. The cars were standing empty when attached. *Held*, that the cars are subject to judicial process, although engaged in interstate commerce. *Davis* v. *Cleveland, Cincinnati, & St. Louis Ry.*, 30 Sup. Ct. 463.

This important question, hitherto undetermined by the Supreme Court, presented a conflict in the state courts. See *Wall* v. *Railroad Co.*, 52 W. Va. 485; *Southern Ry. Co.* v. *Brown*, 131 Ga. 245. The present decision is of most importance in deciding that the action Congress has taken concerning the forwarding of cars engaged in interstate commerce does not prevent their attachment. See U. S. COMP. ST. (1901) pp. 3564, 3154. The state statute providing for such judicial process is held not unconstitutional, although broader statutes have been construed not to apply to cars in this situation. *Michigan Central Ry. Co.* v. *Chicago & Michigan Lake Shore Ry. Co.*, 1 Ill. App. 399. Therefore the court will decide in each particular case whether or not the attachment is void. The opinion in the principal case is confined to the facts presented, which are the least difficult of determination. But it is believed that the Court will be very unwilling to restrict the states in such an important function as the collection of debts, when there is no legislative act of the state directly affecting interstate commerce. *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388; *The Winnebago*, 205 U. S. 354. Certainly the former distinction between foreign and domestic attachment will be disregarded. *Connery* v. *Quincy, Omaha, & Kansas City Ry. Co.*, 92 Minn. 20. Indeed it would be wise to take the position that no judicial process under the usual attachment laws is invalid. But see 20 HARV. L. REV. 319.

INTERSTATE COMMERCE — CONTROL BY STATES — EFFECT OF POSTPONEMENT CLAUSE IN FEDERAL STATUTE. — A federal statute was passed prescribing a maximum number of hours of employment for telegraph operators engaged in interstate transportation. This statute was not to take effect until one year after its passage. During this period a state statute was passed fixing a shorter maximum number of hours for railroad telegraph operators. The defendant, an interstate carrier, was sued for a violation of this state statute, committed before the federal statute went into effect and relating to the employment of an operator having to do with interstate trains. *Held*, that the state statute is invalid. *People* v. *Erie R. R. Co.*, 135 N. Y. App. Div. 767.

In matters of interstate commerce which do not require uniformity throughout the United States the power of Congress is only potentially exclusive and the states have concurrent jurisdiction until Congress acts. *Cooley* v. *Board of Wardens of Phila.*, 12 How. (U. S.) 299; *Nashville, etc. Ry.* v. *Alabama*, 128 U. S. 96. The number of hours of employment of telegraph operators directing the operation of interstate trains is not a subject so national in character as to require uniformity, and therefore regulation is allowable under the police power reserved to the states. *State* v. *Chicago, M. & St. P. R. R. Co.*, 136 Wis. 407. *Cf. Smith* v. *Alabama*, 124 U. S. 465. Likewise Congress has power to regulate such matters. See *Employers' Liability Cases*, 207 U. S. 463, 495. A statute may exist for many purposes before it actually goes into effect. *The People* v. *Inglis*, 161 Ill. 256; *Stine* v. *Bennett*, 13 Minn. 153. In the present case the federal act was effective immediately on its passage as a declaration of the purpose of Congress to assume exclusive jurisdiction. Therefore the statute was rightly held to represent sufficient congressional action to exclude future state legislation on the same subject. *State* v. *Mo. Pac. Ry. Co.*, 212 Mo. 658; *State* v. *Chicago, M. & St. P. R. R. Co.*, *supra*. But as to state statutes in force before its passage, it is submitted that the federal act should have no effect during the postponement period. Thus a federal bankruptcy law with a similar postponement clause does not suspend existing state insolvent laws until the day it goes into effect. *Larrabee* v. *Talbot*, 5 Gill (Md.) 426, 441.